IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.474 OF 2004
IN
EXECUTION APPLICATION NO.452 OF 2003
IN
AWARD DATED 31.10.2000
IN
ARBITRATION PROCEEDINGS NO.198 OF 2000

M/s.Manipal Finance Corpn.Ltd. ..Judg.Creditor.

V/s.

Modern Threads Ltd. & Anr. ..Judg.Debtors.

And

Smt. Lalitha Ranka. ..Applicant.

Mr.Pratik Sakseria with Kartik Samsundaram i/b Lalit Kumar Jain for applicant-defendant.

Mr.T.A.Goradia for plaintiff.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 25, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. By this Chamber summons, the applicant, who is a third party and incidently, wife of Judgment Debtor No. 2, prays that the attachment in respect of the immovable property situated at 701, 7th floor, Siddhartha, R.G.Thadani Marg, Worli, Mumbai 400 018 be raised. According to the applicant, she is not

the Judgment Debtor, for which reason no attachment can be levied in respect of the property held and possessed by her. Besides, the applicant is a tenant in respect of suit premises which belongs to Mahabodhi Society in India (Bombay) Branch, Bahujana Vihar Trust. The applicant is in occupation of the aforesaid premises since October, 1992 as a tenant. Moreover, the premises in question are residential premises, which, therefore, cannot be attached and proceeded against in the execution proceedings. To support the stand that the applicant is tenant in the disputed premises, the applicant is relying on the unregistered agreement dated 21st October, 1992 as well as rent receipts issued by the trust in favour of the applicant and rent receipt as on 29th September, 2003, whereunder the applicant has paid rent for the period from 1st January, 2003 to 1st December, 2003 to the Trust as well as proportionate contribution for monthly taxes. Ordinarily, on the aforesaid documents, it can be assumed that the applicant is the tenant in the disputed premises. Indeed, the Judgment creditor may be right in contending that the agreement in question cannot be pressed into service, as the same is an unregistered document and therefore, inadmissible in evidence. However, I find substance in the argument of the

applicant that even if the said document is not registered the fact remains that the applicant is in possession of the premises as tenant and the landlord has recognised the applicant as tenant since 1992 by accepting rent from time to time, which would constitute monthly tenancy created in favour of the applicant. This legal position is buttressed by relying on the decision in **Biswabani Pvt.Ltd. V/s. Santosh Kumar Dutta reported in AIR 1980 S.C. 226.** In other words, I have no difficulty in proceeding on the basis that the applicant is a tenant in the disputed premises and that the disputed premises are given to the applicant for residential user. A priori, the premises cannot be made subject matter of execution proceedings.

3. To get over this position, counsel for the Judgment creditor contends that there is discrepancy in the name of the premises referred to in the affidavit dated 13th October, 1992 and the rent receipts. So far as rent receipts are concerned, the description of the premises given therein matches with the description of the premises given in the warrant of attachment. In the agreement, the premises are described as "Atithi Griha", whereas in rent receipts and warrant of attachment, the same is

described as "Sidharth Bhavan".

4. Relying on this descripancy counsel for the Judgment creditor submits that the applicant has not pleaded that the premises attached under the warrant of attachment and the one possessed by the applicant are the same premises. I see no substance in this argument. Applicant, in the affidavit in support of the application, has clearly stated that both the descriptions refer to the disputed premises. The building is known as "Atithi Griha" as well as "Sidharth Bhavan." This position is fortified from the communication issued by the landlord trust dated 6th November, 1992, which mentions that the flat in question is on 7th floor, No.701 in " Atithi Griha", "Sidharth" alongwith two parking places. The Judgment creditor has taken inspection of this document and has not taken any objection or pointed out any fallacy in this document, in the reply affidavit.

5. Be that as it may, from the material on record, it can be safely concluded that the premises attached under the warrant of attachment as flat No.701 on 7th floor in Sidharth Building is the same which is occupied by the applicant in respect of

which landlord trust has issued rent receipt in favour of the applicant at page Nos. 31 to 34.

6. Counsel for the Judgment Creditor would then contend that the Judgment debtor No.2 who is the husband of the applicant had filed chamber summons No.339 of 2004, praying for raising of attachment in respect of the very same premises, for which present chamber summons has been taken out by the applicant. Indeed, this position is not disputed by the counsel for the applicant. He however, submits that the applicant was not party to the said chamber summons. Besides, the question whether the disputed premises belong to applicant or Judgment Debtor No.2 was not pressed at the hearing of the said chamber summons, as can be seen from the order dated 14th March, 2005. I find substance in the submission. The order dated 14th March, 2005 proceeds to record that the company is before BIFR, for which reason, decree cannot be executed in respect of the property of the company. The Judgment creditor was granted liberty to proceed against the personal properties of the Judgment debtor No.2. No adjudication has been done with regard to the title in respect of the disputed premises.

7. As mentioned earlier, from the record, it is clear that the applicant is tenant in respect of the disputed premises. The premises in question are let out and are used for residential purpose. In such a situation, attachment of the disputed premises could not be effected and continued also because the applicant is not the Judgment debtor

8. Accordingly, this chamber summons ought to succeed. The same is made absolute in terms of prayer clause (a). No order as to costs.